

1 **UNITED STATES DISTRICT COURT**
2 **DISTRICT OF NEVADA**

3
4 Tony L. Hobson,

5 Plaintiff

6 v.

7 Clark County, et al.

8 Defendant
9

Case No.: 2:16-cv-00437-JAD-VCF

**Order Granting Motion for Summary
Judgment**

[ECF No. 42]

10 Pro se plaintiff Tony Hobson brings this civil-rights action under 42 U.S.C. § 1983 to
11 recover for events that allegedly occurred while he was awaiting trial at the Clark County
12 Detention Center (CCDC). After screening his complaint, I permitted Hobson's excessive-force
13 and procedural-due-process claims to proceed against Corrections Officers Sergio Corona,
14 Reygie Cera, Salvatore Parascando, and Cheri Smith, and Sergeant Shimeka Graham.¹ Hobson
15 contends that Officers Corona and Cera used excessive force on him and Sergeant Graham and
16 Officers Parascando and Smith covered up for Corona and Cera in their investigation of the
17 incident. The defendants move for summary judgment on both of Hobson's claims, arguing that
18 Hobson did not exhaust his administrative remedies and that, even if he did, the evidence shows
19 that the force used was reasonable, Hobson received all process that was due under the
20 circumstances, and that they are entitled to qualified immunity.² Because Hobson failed to
21 exhaust his administrative remedies, I grant the defendants' motion.
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23 ¹ ECF No. 4 (screening order).

² ECF No. 42.

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“Failure to exhaust under the PLRA is ‘an affirmative defense [that] the defendant must plead and prove.’”⁶ The Ninth Circuit instructed in *Albino v. Baca* that a summary-judgment motion is the proper procedural device to resolve PLRA exhaustion questions.⁷ Under that standard, “the defendant’s burden is to prove that there was an available administrative remedy and that the prisoner did not exhaust that available remedy.”⁸ If the defendant carries its burden, “the burden shifts to the prisoner to come forward with evidence showing that there is something in his particular case that made the existing and generally available administrative remedies

⁸ *Id.* at 1172.

1 effectively unavailable to him.”⁹ “However, . . . the ultimate burden of proof remains with the
2 defendant.”¹⁰

3 “If undisputed evidence viewed in the light most favorable to the prisoner shows a failure
4 to exhaust, a defendant is entitled to summary judgment under Rule 56.”¹¹ But “[i]f a motion for
5 summary judgment is denied, disputed factual questions relevant to exhaustion should be denied
6 by the judge, in the same manner a judge rather than a jury decides disputed factual questions
7 relevant to jurisdiction and venue.”¹²

8 9 **Analysis**

10 **A. Hobson failed to exhaust administrative remedies for his procedural-due-process claim.**

11 Hobson’s due-process claim arises out of the Conduct Adjustment Hearing (CAB)
12 process at CCDC. He had a CAB hearing after his confrontation with Officers Cera and Corona,
13 was found guilty of rule violations, and was punished with 20 days confined to his cell, 14 days
14 suspended commissary privileges, and 10 days suspended confinement.¹³ Hobson testified that
15 he chose not to appeal this decision because there was “no point” in doing so.¹⁴ The defendants
16 argue that inmates at CCDC have the right to appeal a CAB decision, and by choosing not to do
17 so, Hobson failed to exhaust his administrative remedies related to any alleged due process

20 ⁹ *Id.*

21 ¹⁰ *Id.* at 1170–71.

22 ¹¹ *Id.* at 1166.

22 ¹² *Id.* at 1170–71.

23 ¹³ ECF No. 42-6 (CAB hearing results).

¹⁴ ECF No. 42-1 at 19–20 (Hobson deposition at 69:18–70:1).

1 violation arising out of the CAB hearing. Hobson argues that he contacted Sheriff Lombardo
2 after the CAB hearing to complain.

3 Inmates at CCDC have the right to appeal CAB hearing results if they believe there was
4 either (1) a violation of inmate disciplinary procedure, (2) the sanction issued was not
5 appropriate to the violation, or (3) the inmate can show that he is not guilty.¹⁵ There are two
6 levels of appeal: first to the Captain or Central Booking Bureau and then to the Deputy Chief or
7 the Detention Services Division.¹⁶ The second-level decision is “final and binding.”¹⁷ Hobson
8 admits that he chose not to appeal the CAB hearing results because he thought it would be
9 pointless to do so, and he goes on to say that after the hearing he “didn’t write [any] more
10 grievances” because he was “through with CCDC.”¹⁸ He contends that writing to the sheriff was
11 “basically [his] appeal process.”¹⁹ But writing Sheriff Lombardo is not part of the official
12 appeals or grievance process. Because the defendants have shown that Hobson did not properly
13 exhaust his administrative remedies for his procedural-due-process claim, I grant summary
14 judgment in their favor.

15 **B. Hobson failed to exhaust administrative remedies for his excessive-force claim.**

16 Hobson alleges that Officers Corona and Cera used excessive force to restrain him after
17 he refused to return to his cell when ordered to do so. The defendants argue that Hobson did not
18 complete the grievance process for this claim as outlined in the CCDC Inmate Handbook.

20 ¹⁵ ECF No. 42-5 at 14–15 (Las Vegas Metropolitan Police Department standard operating
21 procedure).

22 ¹⁶ *Id.* at 15.

23 ¹⁷ *Id.*

¹⁸ ECF No. 42-1 at 20 (Hobson deposition at 70:2–23).

¹⁹ *Id.* (Hobson deposition at 72:19–20).

1 Hobson responds that he exhausted his remedies by reporting the incident to the Internal Affairs
2 Bureau (IAB) and submitting two grievances to a lieutenant and a captain.

3 The inmate grievance process at CCDC requires filing a grievance at “each level of [its]
4 chain of command.”²⁰ Inmates must first speak to their housing unit officer and continue up the
5 chain through sergeant, lieutenant, captain, and deputy chief.²¹ Hobson submitted only two
6 grievances about this incident: first to a lieutenant and then to a captain.²² He presents no
7 evidence that he completed the process, and he testified that he thought the grievance process
8 was pointless so he instead chose to write to Sheriff Lombardo and the IAB.²³ But “participating
9 in an internal affairs investigation is not sufficient to satisfy the exhaustion requirement of the
10 PLRA.”²⁴ The focus is on the inmate’s grievance and available administrative remedies, not the
11 investigation by an outside entity, so participation in such an investigation is not equivalent to
12 asserting a grievance in the available administrative procedure.²⁵

13 Because Hobson never submitted a grievance to the deputy chief, and his complaints to
14 outside entities do not satisfy the exhaustion requirement of the PLRA, I grant summary
15 judgment in the defendants’ favor on this claim, too.

20 ²⁰ ECF No. 42-2 at 55 (CCDC Inmate Handbook).

21 ²¹ *Id.*

22 ²² ECF No. 1-1 at 16–20.

23 ²³ ECF No. 42-1 at 20 (Hobson deposition at 71:23–72:15).

23 ²⁴ *Panaro v. City of N. Las Vegas*, 432 F.3d 949, 950 (9th Cir. 2005).


²⁵ *Id.* at 953.

1 **Conclusion**

2 IT IS THEREFORE ORDERED that the defendants' motion for summary judgment
3 **[ECF No. 42] is GRANTED.**

4 And with good cause appearing and no reason to delay, IT IS FURTHER ORDERED
5 that the **Clerk of Court** is directed to **ENTER JUDGMENT** in the defendants' favor and
6 **CLOSE THIS CASE.**

7 Dated: March 31, 2019

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10 U.S. District Judge Jennifer A. Dorsey
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